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JUL 17 2002

In re Application of
Brian Moore
Application No. 09/854,905
Filed: May 15, 2001
Attorney Docket No. 11157-23

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition filed on April 6, 2002, requesting the application be accorded a filing date of May 15, 2001, including page 20 of the specification.

The application was filed on May 15, 2001. However, on July 11, 2001, the Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring the basic filing fee, additional claim fee, and an executed oath or declaration. The Notice to File Missing Parts made no mention of the specification. Petitioner responded to the Notice on September 4, 2001, and filed the filing fee, additional claims fee, and oath or declaration and surcharge.

Subsequently, on March 12, 2002 this Office mailed a Withdrawal of Previously Sent Notice, withdrawing a Notice mailed on September 25, 2001¹, and enclosing a corrected Notice. The corrected notice, a Notice of Omitted Item(s) in a Nonprovisional Application, required page 20 of the specification.

Petitioner argues, *inter alia*, that page 20 of the specification was included among 44 pages of specification filed initially, on May 15, 2001, and were received by this Office as evidenced by the return-receipt postcard. In support, Petitioner provides a copy of a return receipt postcard acknowledging receipt of 44 pages of specification filed on May 15, 2001.

A review of the return receipt postcard reveals that Petitioner is correct. The postcard acknowledges receipt of 44 pages of specification, by this Office on May 15, 2001. Petitioner has also re-submitted page 20 of the specification with the instant petition.

¹ Office records reveal that no Notice was mailed on September 25, 2001, in the above-identified application.

Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self-addressed postcard properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the postcard in the outgoing mail. "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." MPEP § 503.

The petition is granted.


The copy of page 20 of the specification, supplied on April 8, 2002, will be used for examination purposes.

No petition fee is required. A refund of the petition fee, \$130.00, has been scheduled.

The application will be returned to the Initial Patent Examination Division for further processing as a nonprovisional application with a filing date of May 15, 2001, and an indication that 44 pages of specification, including page 20 of the specification, were present on filing.

Thereafter the application will be returned to Technology Center AU 2829 for processing in due course.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Conferee: Christina Donnell, Esq.

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REQUEST FOR PATENT FEE REFUND

1 Date of Request: 6-24-02 2 Serial/Patent # 09/854,905

3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
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11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: DEREK L. WOODS

TITLE: Attorney

SIGNATURE: Derek Woods

PHONE: 305-0014

OFFICE: Petitions

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APPROVED: Alicia Kelly

DATE: 7/18/02

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